

§ 1016.44

10 CFR Ch. X (1–1–05 Edition)

§ 1016.44 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates, attempts to violate, or conspires to violate any provision of the Act or any regulation or order issued thereunder, including the provisions of this part, may be guilty of a crime and upon conviction may be punished by fine or imprisonment, or both, as provided by law.

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

Sec.

- 1017.1 Purpose and scope.
- 1017.2 Applicability.
- 1017.3 Definitions.
- 1017.4 Policy.
- 1017.5 Prohibitions.
- 1017.6 Exemptions.
- 1017.7 Identification of unclassified controlled nuclear information.
- 1017.8 Categories of unclassified controlled nuclear information.
- 1017.9 Adverse effect test.
- 1017.10 Nuclear material determinations.
- 1017.11 Quarterly report.
- 1017.12 Review and denial of documents or material.
- 1017.13 Retirement of documents or material.
- 1017.14 Joint information, documents, or material.
- 1017.15 Markings on documents or material.
- 1017.16 Access to unclassified controlled nuclear information.
- 1017.17 Physical protection requirements.
- 1017.18 Violations.

AUTHORITY: 42 U.S.C. 2168; 28 U.S.C. 2461 note.

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§ 1017.1 Purpose and scope.

(a) This part contains regulations of the Department of Energy (DOE) implementing section 148 (42 U.S.C. 2168) of the Atomic Energy Act which prohibits the unauthorized dissemination of certain unclassified government information. This information, identified by the term “Unclassified Controlled Nuclear Information” (UCNI), is lim-

ited to information concerning atomic energy defense programs.

(b) These regulations—

(1) Provide for the review of information prior to its designation as UCNI;

(2) Describe how information is determined to be UCNI;

(3) Establish minimum physical protection standards for documents and material containing UCNI;

(4) Specify who may have access to UCNI; and

(5) Establish a procedure for the imposition of penalties on persons who violate section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations.

§ 1017.2 Applicability.

These regulations apply to—

(a) Any person authorized access to UCNI;

(b) Any person not authorized access to UCNI who acquires, attempts to acquire, or conspires to acquire, in violation of these regulations, Government information in any document or material containing an UCNI notice (refer to § 1017.15); and

(c) Any person not authorized access to UCNI but who wants to be authorized access to UCNI.

§ 1017.3 Definitions.

As used in this part—

(a) *Atomic Energy Act* means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

(b) *Atomic Energy Defense Programs* means activities, equipment, and facilities of the DOE or other Government agencies utilized or engaged in support of the—

(1) Development, production, testing, sampling, maintenance, repair, modification, assembly, utilization, transportation, or retirement of nuclear weapons or components of nuclear weapons;

(2) Production, utilization, or transportation of nuclear material for military applications; or

(3) Safeguarding of activities, equipment, or facilities which support the functions in paragraphs (b)(1) and (b)(2) of this section, including the protection of nuclear weapons, components of

Department of Energy

§ 1017.3

nuclear weapons, or nuclear material for military applications at a fixed facility or in transit.

(c) *Authorized Individual* means a person who has been granted routine access to UCNI under § 1017.16(a).

(d) *Component* means any operational, experimental, or research-related part, subsection, design, or material used in the manufacture or utilization of a nuclear weapon, nuclear explosive device, or nuclear weapon test assembly.

(e) *Controlling Official* means an individual authorized under § 1017.7(a) to make a determination that specific Government information is, is not, or is no longer UCNI, such determination serving as the basis for determinations by a Reviewing Official that a document or material contains, does not contain, or no longer contains UCNI.

(f) *Denying Official* means an individual authorized under § 1017.12(b) to deny a request made under statute or Executive order for all or any portion of a document or material containing UCNI.

(g) *Document or Material* means the physical medium on or in which information is recorded, or a product or substance which contains or reveals information, regardless of its physical form or characteristics.

(h) *Formerly Restricted Data* means a category of information classified under section 142 d. of the Atomic Energy Act.

(i) *Government* means the Executive Branch of the United States Government.

(j) *Government Information* means any fact or concept, regardless of its physical form or characteristics, that is owned by, produced by or for, or otherwise controlled by the United States Government.

(k) *In Transit* means the physical movement of a nuclear weapon, a component of a nuclear weapon, or nuclear material from one part to another part of a facility or from one facility to another facility. An item is considered "in transit" until it has been relinquished to the custody of the authorized recipient at its ultimate destination. An item in temporary storage pending shipment to its ultimate destination is "in transit."

(l) *National Security Information* means a category of information classified under Executive Order 12356, "National Security Information," or its successor executive orders.

(m) *Nuclear Material* means special nuclear material, byproduct material, or source material as defined by sections 11 aa., 11e., and 11z., respectively, of the Atomic Energy Act, or any other material used in the production, testing, utilization, or assembly of nuclear weapons or components of nuclear weapons that the Secretary determines to be nuclear material under § 1017.10(a).

(n) *Nuclear Weapon* means atomic weapon.

(o) *Physical Security* means the combination of operational and security equipment, personnel, and procedures used to protect facilities, information, documents, or material against theft, sabotage, diversion, or other criminal acts.

(p) *Restricted Data* means a category of information classified under section 142 of the Atomic Energy Act.

(q) *Reviewing Official* means an individual authorized under § 1017.12(a) to make a determination, based on guidelines which reflect decisions of Controlling Officials, that a document or material contains UCNI.

(r) *Safeguards* means an integrated system of physical protection, personnel reliability, accountability, and material control measures designed to deter, prevent, detect, and respond to unauthorized access, diversion, or possession of a nuclear weapon, a component of a nuclear weapon or nuclear material.

(s) *Secretary* means the Secretary of Energy.

(t) *Unauthorized Dissemination* means the intentional or negligent transfer, in any manner, by any person, of information contained in a document or material determined by a Reviewing Official to contain UCNI and marked in accordance with § 1017.15 to any person other than an Authorized Individual or a person granted special access to UCNI under § 1017.16(b).

(u) *Unclassified Controlled Nuclear Information* means certain unclassified government information prohibited

§ 1017.4

from unauthorized dissemination under section 148 of the Atomic Energy Act—

(1) Which concerns atomic energy defense programs;

(2) Which pertains to—

(i) The design of production facilities or utilization facilities;

(ii) Security measures (including security plans, procedures, and equipment) for the physical protection of—

(A) Production or utilization facilities;

(B) Nuclear material contained in such facilities; or

(C) Nuclear material in transit; or

(iii) The design, manufacture, or utilization of any nuclear weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Assistant Secretary for Defense Programs (or the head of the predecessor agency of the Department of Energy) pursuant to section 142 of the Atomic Energy Act; and

(3) Whose unauthorized dissemination, as determined by a Controlling Official, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) Illegal production of nuclear weapons; or

(ii) Theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

§ 1017.4 Policy.

It is the policy of the DOE to make information publicly available to the fullest extent possible. These regulations shall be interpreted and implemented so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, consistent with the requirement in section 148 of the Atomic Energy Act to prohibit the unauthorized dissemination of UCNI. For example—

(a) Although UCNI is not subject to disclosure under the Freedom of Information Act (FOIA), documents or material containing both UCNI and other information which is not UCNI shall

10 CFR Ch. X (1–1–05 Edition)

have the portions of the document or material not containing UCNI released to the maximum possible extent in response to a request made under the FOIA, subject to other exemptions of the FOIA; and

(b) To the fullest extent possible, the fundamental DOE policy of full disclosure of documents prepared under the National Environmental Policy Act (NEPA) and its implementing regulations will be followed. In some cases, this will mean that UCNI may be excised from documents to be made publicly available and prepared as an appendix, or otherwise segregated so as to allow the release of the nonsensitive portions of a document.

§ 1017.5 Prohibitions.

Government information shall not be controlled as UCNI in order to—

(a) Conceal violations of law, inefficiency, or administrative error;

(b) Prevent embarrassment to a person or organization;

(c) Restrain competition; or

(d) Prevent or delay the release of any information that does not properly qualify as UCNI.

§ 1017.6 Exemptions.

(a) Information exempt from these regulations includes—

(1) Information that is not government information;

(2) Information that concerns activities, facilities, or equipment outside the scope of atomic energy defense programs;

(3) Information that is classified as Restricted Data, Formerly Restricted Data, or National Security Information, or that is protected from disclosure under section 147 of the Atomic Energy Act (42 U.S.C. 2167);

(4) Basic scientific information (i.e., information resulting from research directed toward increasing fundamental scientific knowledge or understanding rather than any practical application of that knowledge);

(5) Applied scientific information (i.e., information resulting from research whose objective is to gain knowledge or understanding necessary for determining the means by which a specific need may be met) but not including that pertaining to:

Department of Energy

§ 1017.7

(i) The design of production facilities or utilization facilities;

(ii) Security measures (including security plans, procedures, and equipment) for the physical protection of:

(A) Production or utilization facilities,

(B) Nuclear material contained in such facilities, or

(C) Nuclear material in transit; or

(iii) The design, manufacture, or utilization of any nuclear weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142 of the Atomic Energy Act;

(6) Safety information used to protect employees from occupational hazards, except for government information that reveals an exploitable vulnerability or design element that is UCNI;

(7) Radiation exposure data and all other personal health information;

(8) Information pertaining to the public health and safety and to the protection of the environment, except for government information that reveals an exploitable vulnerability or design element that is UCNI;

(9) Information concerning the transportation of low level or commercially generated radioactive waste; and

(10) Waste Isolation Pilot Plant (WIPP) information, except for government information that deals with safeguards or physical security for the WIPP project.

(b) Documents exempt from these regulations include—

(1) Documents prepared under Council on Environmental Quality regulations or DOE guidelines complying with the National Environmental Policy Act, except those portions of a document revealing an exploitable vulnerability or design element that is UCNI;

(2) Documents or material that a Reviewing Official determines to have been widely disseminated in the public domain (e.g., to a public library or a university library); and

(3) For documents which contain UCNI, any reasonably segregable portions of documents which do not con-

tain UCNI or which contain information otherwise exempt from disclosure.

§ 1017.7 Identification of unclassified controlled nuclear information.

(a) *Authorities*—(1) *Controlling Officials*. A Controlling Official having cognizance over certain government information is authorized to make a determination that the government information is or is not UCNI. A Controlling Official with overall cognizance over UCNI under consideration for decontrol is authorized to make a determination that the information is no longer UCNI. Each Controlling Official having cognizance over UCNI under consideration for decontrol shall concur in the determination to decontrol the UCNI prior to the UCNI being decontrolled.

(2) *Designation*. The Secretary may designate the Deputy Secretary, the Under Secretary, a Secretarial Officer of the DOE, or a Manager of a DOE Operations Office to be a Controlling Official for government information within his or her cognizance. The Controlling Official may redelegate his or her authority in accordance with the redelegation provisions in the designation of authority from the Secretary.

(3) Controlling Officials shall exercise their authorities in strict compliance with the rules, prohibitions, and exemptions described in these regulations.

(b) *Criteria*. Prior to a specific type of information being identified and controlled as UCNI, a Controlling Official shall insure that the information under review meets each of the following criteria:

(1) The information is government information.

(2) The information is limited to information concerning atomic energy defense programs.

(3) The information is within the scope of at least one of the three categories of UCNI in § 1017.8.

(4) Unauthorized dissemination of the information under review meets the adverse effect test in § 1017.9.

(5) The information is the minimum amount of information necessary to be controlled to protect the health and safety of the public or the common defense and security.

§ 1017.8

10 CFR Ch. X (1–1–05 Edition)

(6) The purpose for controlling the information is not prohibited under § 1017.5.

(7) The information is not exempt from these regulations under § 1017.6.

(c) *Procedures.* A Controlling Official shall report each determination to control or decontrol UCNI to the Assistant Secretary for Defense Programs for—

(1) Inclusion in the quarterly report required in § 1017.11; and

(2) Incorporation into guidelines which Reviewing Officials consult in their review of documents and material for UCNI.

§ 1017.8 Categories of unclassified controlled nuclear information.

In order for information to be considered for control as UCNI, it must be within the scope of at least one of the following categories and it must meet each of the other criteria in § 1017.7(b).

(a) *Category A—Unclassified Controlled Production or Utilization Facility Design Information.* This category includes certain unclassified government information concerning—

(1) The design of production or utilization facilities which are related to atomic energy defense programs; or

(2) Design-related operational information concerning the production, processing, or utilization of nuclear material for atomic energy defense programs.

(b) *Category B—Unclassified Controlled Safeguards and Security Information.* This category includes certain unclassified government information concerning security measures for the protection of—

(1) Production or utilization facilities related to atomic energy defense programs;

(2) Nuclear material to be used for military applications, regardless of its physical state or form, contained in these facilities; or

(3) Nuclear material to be used for military applications, regardless of its physical state or form, that is in transit.

(c) *Category C—Declassified Controlled Nuclear Weapon Information.* This category includes certain declassified government information concerning the design, manufacture, or utilization of nuclear weapons or components of nu-

clear weapons that was once classified as Restricted Data but which has been declassified or removed from the Restricted Data Category by the Assistant Secretary for Defense Programs (or the head of predecessor agencies of the Department of Energy) under section 142 of the Atomic Energy Act.

§ 1017.9 Adverse effect test.

(a) *Determination.* In order for a Controlling Official to control government information as UCNI, the Controlling Official shall make a determination that the unauthorized dissemination of the government information under review could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(1) Illegal production of a nuclear weapon; or

(2) Theft, diversion, or sabotage of nuclear material, equipment, or facilities.

(b) *Other factors.* In making a determination under § 1017.9(a), a Controlling Official may consider how the dissemination of government information under review for control as UCNI could assist a potential criminal in—

(1) Selecting a target for an act of theft, diversion, or sabotage of nuclear material, equipment, or facilities (e.g., relative importance of a facility; location, form, and quantity of nuclear material);

(2) Planning and committing an act of theft, diversion, or sabotage of nuclear material, equipment, or facilities (e.g., design of operational and security systems; building plans; methods and procedures for transfer, accountability, and handling of nuclear material; security plans, procedures, and capabilities);

(3) Measuring the success of an act of theft, diversion or sabotage of nuclear material, equipment, or facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities);

(4) Illegally fabricating, acquiring, or detonating a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of

Department of Energy

§ 1017.13

unique nuclear materials needed to fabricate such a device; location of a nuclear weapon); or

(5) Dispersing hazardous nuclear material which could be used as an environmental contaminant (e.g., location, form, and quantity of nuclear material).

§ 1017.10 Nuclear material determinations.

(a) The Secretary may determine that a material other than special nuclear material, byproduct material, or source material as defined by the Atomic Energy Act is included within the scope of the term "nuclear material" if—

(1) The material is used in the production, testing, utilization; or assembly of atomic weapons or components of atomic weapons; and

(2) Unauthorized acquisition of the material could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security because the specific material—

(i) Could be used as a hazardous environmental contaminant; or

(ii) Could be of significant assistance in the illegal production of a nuclear weapon.

(b) Designation of a material as a nuclear material under paragraph (a) of this section does not make all information about the material UCNI. Specific information about the material must still meet each of the criteria in § 1017.7(b) prior to its being identified and controlled as UCNI.

§ 1017.11 Quarterly report.

The Assistant Secretary for Defense Programs shall prepare a report on a quarterly basis, to be made available upon request to any interested person, detailing the application during the previous quarter of each regulation or order prescribed or issued under section 148 of the Atomic Energy Act, including these regulations. Requests for this report may be sent to the Assistant Secretary for Defense Programs (refer to § 1017.16(b)(1) for the address).

This report must—

(a) Identify types of government information determined to be UCNI by

any Controlling Official during the previous quarter;

(b) Include a justification specifying why the government information is UCNI; and

(c) Include a justification that these regulations have been applied so as to protect from disclosure only the minimum amount of government information necessary to protect the health and safety of the public or the common defense and security.

§ 1017.12 Review and denial of documents or material.

(a) *Reviewing Officials.* A Reviewing Official with cognizance over the information contained in a document or material is authorized to—

(1) Make a determination, based on guidelines which reflect decisions of Controlling Officials, that the document or material contains, does not contain, or no longer contains UCNI; and

(2) Apply or remove UCNI markings to or from the document or material.

(b) *Denying Officials.* A Denying Official with cognizance over the information contained in a document or material is authorized to deny a request made under a statute or Executive order for all or any portion of the document or material that contains UCNI. The Denying Official bases his or her denial on guidelines which reflect decisions of Controlling Officials. The Denying Official insures that the Reviewing Official who determined that the document or material contains UCNI correctly applied and interpreted the guidelines.

(c) *Designation.* Reviewing and Denying Officials are designated in accordance with Departmental directives issued by the Secretary.

§ 1017.13 Retirement of documents or material.

(a) *Unmarked documents or material.* Any document or material which is not marked as containing UCNI but which contains government information within the scope of the categories in § 1017.8 shall be marked with the notice in § 1017.15(a)(2) upon retirement to a repository (e.g., an agency's centralized records storage area, a Federal Records Center, the National Archives of the

§ 1017.14

10 CFR Ch. X (1–1–05 Edition)

United States). The Secretary may approve alternative procedures to those described in this paragraph.

(b) *Marked documents or material.* A document or material containing an UCNI notice (refer to § 1017.15) is not required to be reviewed by a Reviewing Official upon or subsequent to retirement, except that a Reviewing Official shall review any retired document or material upon request for its release into the public domain.

(c) *Existing documents or material.* Any document or material retired to a repository prior to the effective date of these regulations need not be reviewed for UCNI. However, any such document or material that is subsequently determined by a Reviewing Official to contain UCNI must be marked and protected by the repository in accordance with these regulations, upon notification from the Reviewing Official to the repository having the document or material.

§ 1017.14 Joint information, documents, or material.

(a) *Joint Information.* A Controlling Official shall coordinate with any other Government agency or DOE organization having cognizance over the information under consideration for control or decontrol prior to making the determination that the information is or is no longer UCNI.

(b) *Joint documents or material.* A Reviewing Official or a Denying Official reviewing a document or material for decontrol and public release shall coordinate this review with the DOE organization or Government agency originating the document or material and with each DOE organization or Government agency having cognizance over any information contained in the document or material.

(c) *Resolution of disagreements.* Since the DOE has overall cognizance over all UCNI and sole responsibility for implementation of section 148 of the Atomic Energy Act, the Secretary has the final authority to resolve all disagreements concerning—

(i) The identification of UCNI that is within the cognizance of more than one DOE organization or of a Government agency in addition to the DOE; or

(2) The control or decontrol or all or any part of any document or material originated by or for the DOE or another Government agency that contains UCNI.

(d) *Notification of determinations.* An official making a determination concerning joint information, documents, or material shall inform affected organizations within the DOE or in other Government agencies of his or her determination.

(e) *Other government information control systems.* A document containing information within the scope of section 148 of the Atomic Energy Act may also contain information within the scope of other government information control systems. Where this is the case, the requirements of the more restrictive system apply.

§ 1017.15 Markings on documents or material.

(a) *Documents or material which may contain UCNI.* (1) Any person who originates or has in his or her possession a document or material that the person believes may contain UCNI, may mark in a conspicuous manner the document or material with the notice in the paragraph (a)(2) of this section prior to transmitting the document or material to a Reviewing Official for a formal determination.

(2) Any Authorized Individual who originates or has in his or her possession a document or material that the Authorized Individual believes may contain UCNI, shall mark in a conspicuous manner the document or material with the following notice—

(i) Prior to transmitting the document or material outside of the Authorized Individual's organization;

(ii) Prior to transmitting the document or material to a Reviewing Official; or

(iii) Upon the retirement of the document or material under § 1017.13:

NOT FOR PUBLIC DISSEMINATION

May contain Unclassified Controlled Nuclear Information subject to section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168). Approval by the Department of Energy prior to release is required.

(b) *Documents or material which contain UCNI.* A Reviewing Official shall

Department of Energy

§ 1017.16

mark in a conspicuous manner each document or material that the Reviewing Official determines to contain UCNI with one of the following notices:

(1) UNCLASSIFIED CONTROLLED NUCLEAR
INFORMATION NOT FOR PUBLIC DISSEMINATION

Unauthorized dissemination subject to civil and criminal sanctions under section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

(2) NOT FOR PUBLIC DISSEMINATION

Unauthorized dissemination subject to civil and criminal sanctions under 42 U.S.C. 2168.

(c) *Other markings.* UCNI markings may be applied regardless of any other distribution control markings (e.g., "Official Use Only," company proprietary) that are also on a document or material.

§ 1017.16 Access to unclassified controlled nuclear information.

(a) *Routine access.* (1) A Reviewing Official is an Authorized Individual for documents or material that the Reviewing Official determines to contain UCNI.

(2) An Authorized Individual, for UCNI in his or her possession or control, may determine that another person is an Authorized Individual who may be granted access to the UCNI, subject to the following limitations, and who may further disseminate the UCNI under the provisions of this section. The person to be granted routine access to the UCNI must—

(i) Have a need-to-know in the performance of official duties or DOE authorized activities for the UCNI to which routine access is to be granted; and

(ii) Be a U.S. citizen who is—

(A) A Government employee or a member of the U.S. Armed Forces;

(B) An employee of a Government contractor or subcontractor, or of a prospective Government contractor or subcontractor for the purpose of bidding on a Government contract or subcontract;

(C) A Government consultant or DOE advisory committee member;

(D) A Member of Congress;

(E) A staff member of a congressional committee or of an individual Member of Congress;

(F) The Governor of a State, his or her designated representative, or a State government official;

(G) A local government official or an Indian tribal government official;

(H) A member of a State, local, or Indian tribal law enforcement or emergency response organization; or

(I) A DOE access permittee authorized access by the Secretary under part 725 of this title to Restricted Data applicable to civil use of atomic energy; or

(iii) Be a person who is not a U.S. citizen but who is—

(A) A Government employee or a member of the U.S. Armed Forces;

(B) An employee of a Government contractor or subcontractor; or

(C) A Government consultant or DOE advisory committee member; or

(iv) Be a person who is not a U.S. citizen but who may be granted routine access to UCNI by an Authorized Individual in conjunction with—

(A) An international nuclear cooperative activity approved by the Government;

(B) U.S. diplomatic dealings with foreign government officials;

(C) An agreement for cooperation under section 123 of the Atomic Energy Act; or

(D) Provisions of treaties, mutual defense acts, Government contracts or subcontracts.

(3) The Secretary may impose additional administrative controls concerning the granting of routine access to UCNI by an Authorized Individual to a person who is not a U.S. citizen.

(4) An Authorized Individual may only disseminate UCNI to another Authorized Individual or to a person granted special access to UCNI under paragraph (b) of this section.

(5) The Assistant Secretary for Defense Programs may waive any of the requirements for determination of routine access to UCNI specified in paragraph (a) of this section.

(b) *Special access.* (1) A person not authorized routine access to UCNI under paragraph (a) of this section may submit a request for special access to UCNI to the—

Assistant Secretary for Defense Programs, U.S. Department of Energy, Washington, DC 20585

§ 1017.17

10 CFR Ch. X (1–1–05 Edition)

(2) Such a request must include—

(i) The name, current residence or business address, birthplace, birthdate, and country of citizenship of the person submitting the request;

(ii) A description of the UCNI for which special access is being requested;

(iii) A description of the purpose for which the UCNI is needed; and

(iv) Certification by the requester of his or her understanding of and willingness to abide by these regulations.

(3) The Assistant Secretary for Defense Programs shall base his or her decision to grant special access to UCNI on an evaluation of—

(i) The sensitivity of the UCNI for which special access is being requested (i.e., the worst-case, adverse effect on the health and safety of the public or the common defense and security which would result from illegal use of the UCNI);

(ii) The purpose for which the UCNI is needed (e.g., will the UCNI be used for commercial or other private purposes or will it be used for public benefit to fulfill statutory or regulatory responsibilities);

(iii) The likelihood of unauthorized dissemination by the requester of the UCNI; and

(iv) The likelihood of the requester using the UCNI for illegal purposes.

(4) The Assistant Secretary for Defense Programs shall attempt to notify a person who requests special access to UCNI within 30 days of receipt of the request as to whether or not special access to the requested UCNI is granted. If a final determination on the request cannot be made within 30 days or receipt of the request, the Assistant Secretary for Defense Programs shall notify the requester, within 30 days of the request, as to when the final determination on the request may be made.

(5) A person granted special access to UCNI is not an Authorized Individual under paragraph (a) of this section and shall not further disseminate the UCNI.

(c) *Notification of responsibilities*—(1) *Routine access.* An Authorized Individual granting routine access to UCNI to another person under paragraph (a) of this section shall notify each person granted such access (other than when the person being granted such access is

a Government employee, a member of the U.S. Armed Forces, or an employee of a Government contractor or subcontractor) of applicable regulations and orders concerning UCNI and of any special redistribution limitations that the Authorized Individual determines to apply for the specific UCNI to which routine access is being granted.

(2) *Special access.* The Assistant Secretary for Defense Programs shall notify each person granted special access to UCNI under paragraph (b) of this section of applicable regulations concerning UCNI prior to dissemination of the UCNI to the person.

(d) *Other persons.* Persons not granted routine access to UCNI under paragraph (a) of this section or special access to UCNI under paragraph (b) of this section shall not have access to UCNI.

§ 1017.17 Physical protection requirements.

(a) *General.* UCNI requires protection from unauthorized dissemination. UCNI must be protected and controlled in a manner consistent with that customarily accorded other types of unclassified but sensitive information (e.g., proprietary business information, personnel or medical records of employees, attorney-client information). Each Government agency and Government contractor authorized access to UCNI shall establish and maintain a system for the protection of UCNI in their possession or under their control that is consistent with the physical protection standards established in this section. Each Authorized Individual or person granted special access to UCNI under § 1017.16(b) who receives, acquires, or produces UCNI or a document or material containing UCNI shall take reasonable and prudent steps to ensure that it is protected from unauthorized dissemination by adhering to these regulations and their implementing directives.

(b) *Protection in use or storage.* An Authorized Individual or a person granted special access to UCNI under § 1017.16(b) shall maintain physical control over any document or material containing an UCNI notice that is in use so as to prevent unauthorized access to it.

Department of Energy

§ 1017.18

When any document or material containing an UCNI notice is not in use, it must be stored in a secure container (e.g., locked desk or file cabinet) or in a location where access is limited (e.g., locked or guarded office, controlled access facility).

(c) *Reproduction.* A document or material containing an UCNI notice may be reproduced to the minimum extent necessary consistent with the need to carry out official duties without permission of the originator, provided the reproduced document or material is marked and protected in the same manner as the original document or materials.

(d) *Destruction.* A document or material containing an UCNI notice may be disposed of by any method which assures sufficiently complete destruction to prevent its retrieval (providing the disposal is authorized by the Archivist of the United States under 41 CFR 101-11.4 and by agency records disposition schedules).

(e) *Transmission.* (1) A document or material containing an UCNI notice must be packaged to prevent disclosure of the presence of UCNI when transmitted by a means which could allow access to the document or material by a person who is not an Authorized Individual or a person granted special access to UCNI under § 1017.6(b). The address and return address must be indicated on the outside of the package.

(2) A document or material containing an UCNI notice may be transmitted by—

(i) U.S. first class, express, certified, or registered mail;

(ii) Any means approved for the transmission of classified documents or material;

(iii) An Authorized Individual or a person granted special access to UCNI under § 1017.16(b), when he or she can control access to the document or material being transmitted; or

(iv) Any other means determined by the Assistant Secretary for Defense Programs to be sufficiently secure.

(3) UCNI may be discussed or transmitted over an unprotected telephone or telecommunications circuit when required by operational considerations. More secure means of communication should be utilized whenever possible.

(f) *Automated Data Processing (ADP).* UCNI may be processed or produced on any ADP system which is certified for classified information or which complies with the guidelines of Office of Management and Budget Circular No. A-71, "Security of Federal Automated Information Systems" or which has been approved for such use in accordance with the provisions of applicable DOE directives.

§ 1017.18 Violations.

(a) *Civil penalty.* Any person who violates section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations, is subject to a civil penalty. The Assistant Secretary for Defense Programs may recommend to the Secretary imposition of this civil penalty, which shall not exceed \$110,000 for each violation.

(1) *Written notification.* (i) Whenever the Assistant Secretary for Defense Programs believes that a person is subject to imposition of a civil penalty under the provisions of section 148b(1) of the Atomic Energy Act, the Assistant Secretary for Defense Programs shall notify the person in writing by certified mail, return receipt requested, of—

(A) The date, facts, and nature of each act or omission with which the person is charged;

(B) The particular provision of section 148 of the Atomic Energy Act or its implementing regulations or orders involved in the violation;

(C) Each penalty which the Assistant Secretary for Defense Programs proposes to recommend the Secretary impose and its amount;

(D) The right of the person to submit to the Assistant Secretary for Defense Programs the person's written reply to each of the allegations in the notification letter. The person shall mail or deliver any reply letter within twenty days of receipt of the notification letter from the Assistant Secretary for Defense Programs.

(E) The right of the person to submit to the Assistant Secretary for Defense Programs a written request for a hearing under paragraph (a)(2) of this section.

(F) The fact that, upon failure of the person to pay any civil penalty imposed by the Secretary, the penalty may be collected by civil action under paragraph (a)(5) of this section.

(ii) The Assistant Secretary for Defense Programs shall respond in writing within ten days of the receipt of a reply or a hearing request letter.

(iii) The Assistant Secretary for Defense Programs, at the request of the person accused of a violation, may extend for a reasonable period the time limit for submitting a reply or a hearing request letter.

(2) *Hearing.* Any person who receives a notification letter under paragraph (a)(1)(i) of this section may request a hearing to answer under oath or affirmation the allegations contained in the notification letter. The person shall mail or deliver any hearing request letter to the Assistant Secretary for Defense Programs within twenty days of receipt of the notification letter. Upon receipt from the person of a written request for a hearing, the Assistant Secretary for Defense Programs shall request that the Secretary appoint a Hearing Officer and, if necessary, a Hearing Counsel.

(i) *The Hearing Counsel.* The Hearing Counsel, if appointed, shall—

(A) Represent the Department;

(B) Consult with the person or the person's counsel prior to the hearing; and

(C) Examine and cross-examine witnesses during the hearing.

(ii) *The Hearing Officer.* The Hearing Officer shall—

(A) Be responsible for the administrative preparations for the hearing;

(B) Convene the hearing as soon as is reasonable;

(C) Conduct the hearing in a manner which is fair and impartial;

(D) Arrange for the presence of witnesses and physical evidence at the hearing;

(E) Make a recommendation that violation of section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations, has occurred only if the DOE proves by the preponderance of the evidence that such a violation occurred; and

(F) Submit his or her recommendation, accompanied by a statement of the findings and reasons supporting them, to the Secretary for the Secretary's final determination on the imposition of a civil penalty.

(iii) *Rights of the person.* The person may—

(A) Present evidence in his or her own behalf, through witnesses, or by documents;

(B) Cross-examine witnesses and rebut records or other physical evidence (except as provided in paragraph (a)(2)(iv)(D) of this section);

(C) Be present during the entire hearing (except as provided in paragraph (a)(2)(iv)(D) of this section);

(D) Be accompanied, represented, and advised by counsel of his or her own choosing; and

(E) Testify in his or her own behalf.

(iv) *Conduct of the Hearing.*

(A) A summarized record of the hearing shall be made.

(B) All relevant and material evidence is admissible (except as provided in paragraph (a)(2)(iv)(D) of this section); however, formal rules of evidence are not applicable.

(C) Witnesses shall testify under oath and are subject to cross-examination (except as provided in paragraph (a)(2)(iv)(D) of this section).

(D) If the Hearing Officer determines that the testimony of a witness or any documentary or physical evidence contains classified information or UCNI, such testimony or evidence will not be considered unless it is material. If it is material, a nonsensitive summary of the testimony or records or description of the physical evidence shall be made available to the person to the maximum extent possible, consistent with the requirements of national security or the public health and safety. In all such cases, the Hearing Officer, in considering such testimony or evidence, shall take into account that the person did not have an opportunity to cross-examine the witness or review the actual document or evidence.

(E) The DOE bears the burden of proving that a violation of section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy

Department of Energy

Pt. 1021

Act, including these regulations, has occurred.

(v) *Failure to request a hearing.* If the person fails to file a written request for a hearing within the specified time period, the person relinquishes his or her right to a hearing. If the person does not request a hearing, the Assistant Secretary for Defense Programs shall transmit his or her recommendation, with any supporting materials, to the Secretary for the Secretary's final determination on the imposition of the civil penalty.

(3) *Final determination.* The Secretary makes the final determination on the disposition of a violation. The Secretary may uphold, compromise or mitigate, or remit any penalty recommended by the Assistant Secretary for Defense Programs.

(4) *Appeal.* A person whom the Secretary has determined violated section 148 of the Atomic Energy Act or any regulations or orders of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations, may appeal the determination of the Secretary to an appropriate United States District Court.

(5) *Collection of Penalty.* (i) The Secretary may request the Attorney General to institute a civil action to collect a penalty imposed by the Secretary under this section.

(ii) The Attorney General has the exclusive power to uphold, compromise or mitigate, or remit any civil penalty imposed by the Secretary under this section and referred to the Attorney General for collection.

(b) *Criminal penalty.* Any person who violates section 148 of the Atomic Energy Act or any regulations or orders of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations may be subject to a criminal penalty under section 223 of the Atomic Energy Act. In such case, the Secretary refers the matter to the Attorney General for investigation and possible prosecution.

[50 FR 15822, Apr. 22, 1985, as amended at 62 FR 46184, Sept. 2, 1997]

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Subpart A—General

Sec.

- 1021.100 Purpose.
- 1021.101 Policy.
- 1021.102 Applicability.
- 1021.103 Adoption of CEQ NEPA regulations.
- 1021.104 Definitions.
- 1021.105 Oversight of Agency NEPA activities.

Subpart B—DOE Decisionmaking

- 1021.200 DOE planning.
- 1021.210 DOE decisionmaking.
- 1021.211 Interim actions: Limitations on actions during the NEPA process.
- 1021.212 Research, development, demonstration, and testing.
- 1021.213 Rulemaking.
- 1021.214 Adjudicatory proceedings.
- 1021.215 Applicant process.
- 1021.216 Procurement, financial assistance, and joint ventures.

Subpart C—Implementing Procedures

- 1021.300 General requirements.
- 1021.301 Agency review and public participation.
- 1021.310 Environmental impact statements.
- 1021.311 Notice of intent and scoping.
- 1021.312 [Reserved]
- 1021.313 Public review of environmental impact statements.
- 1021.314 Supplemental environmental impact statements.
- 1021.315 Records of decision.
- 1021.320 Environmental assessments.
- 1021.321 Requirements for environmental assessments.
- 1021.322 Findings of no significant impact.
- 1021.330 Programmatic (including site-wide) NEPA documents.
- 1021.331 Mitigation action plans.
- 1021.340 Classified, confidential, and otherwise exempt information.
- 1021.341 Coordination with other environmental review requirements.
- 1021.342 Interagency cooperation.
- 1021.343 Variances.

Subpart D—Typical Classes of Actions

- 1021.400 Level of NEPA review.
- 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

APPENDIX A TO SUBPART D TO PART 1021—
CATEGORICAL EXCLUSIONS APPLICABLE TO
GENERAL AGENCY ACTIONS